

Attorney Docket No. CNTW-008/00US

PATENT

Express Mail Label Number: EV778911026US Date of Deposit: May 3, 2006.

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Date: May 3, 2006

By: Sherry Duncan Bitler
Sherry Duncan Bitler

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of COURTNEY

Confirmation No.: 9218

Serial No. 09/942,833

Examiner: T. Q. Phan

Filed: 08/29/2001

Art Unit: 2128

FOR: SYSTEM AND METHOD FOR MODELING A NETWORK DEVICE'S CONFIGURATION

Mail Box AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In response to the Final Office Action ("Final Action") of December 19, 2005, Applicants respectfully request a review of the above-identified matter prior to filing of an Appeal Brief. A Notice of Appeal is filed herewith under 37 C.F.R. 41.31. Applicants submit that a review is appropriate because there are limitations in the claimed invention that have not been identified in the prior art by the Examiner.

ARGUMENT

Claims 1 and 3-36 remain pending in this application for consideration. Reconsideration of claims 1 and 3-36 in light of the remarks below is respectfully requested.

Claim Rejections Under 35 U.S.C. §103(a)

Claims 1 and 3-36 stand rejected on the basis that U.S. Patent Application No. 2002/0191619 ("Shafer") render the claims obvious. Applicants submit this rejection is improper because the Final Action has not identified at least a suggestion of each

limitation of the claimed invention.

With respect to claim 1, the Final Action *does not even allege* that *Shafer* teaches determining a characteristic of the network device that “comprises one of a network device manufacturer, network device model, and network device operating system version.” Instead, the Final Office Action appears to ignore these limitations and instead alleges (on pages 3 and 11) that *Shafer* discloses, at paragraphs 0020, 0033, 0037, 0042, 0044 and 0057-0060, “[d]etermining characteristics of the network device for interfacing (such as power, voltage, current, ports, i/o bandwidth, model device type, device configuration file for operation, etc).” The Final Action does allege that *Shafer* teaches determining “model device type,” but this collection of words is not found in claim 1, so Applicants are unsure whether the Final Action is referring to the recited “network device model.”

Assuming, arguendo, that the Final Action is alleging the “model device type” recited in the Final Action corresponds to the “network device model” recited in claim 1, the Final Action does not identify with any specificity where *Shafer* allegedly teaches determining a “model device type.” Specifically, Applicants have searched paragraphs 0020, 0033, 0037, 0042, 0044 and 0057-0060 and are unable to find a single recitation of “model device type,” “model device,” “device type,” “model type,” “model,” or even “type,” and the Final Action does not identify with any specificity where in *Shafer* a “model device type” is determined.

Although the Final Office Action does not even allege *Shafer* teaches “determining...one of a network device manufacturer, network device model, and network device operating system version,” Applicants have reviewed the paragraphs cited by the Examiner (i.e., 0020, 0033, 0037, 0042, 0044 and 0057-0060) and neither “manufacture,” “operating system version,” nor “model” is even found. As a consequence, Applicants submit the rejection is improper. Claims 24 and 29 include similar limitations and Applicants submit the rejections of claims 24 and 29 are also improper for the same reasons.

In addition, the Office action contends *Shafer* teaches “retrieving a representation of a configuration schema...corresponding to the determined characteristic of the

network device.” The rejection is improper because “configuration schema” does not appear at all within *Shafer* and the Final Action does not identify with any specificity what construct within *Shafer* allegedly corresponds to the recited “configuration schema.” As a consequence, it is impossible for the Final Action to connect the recited “configuration schema” with any specificity to particular teachings in *Shafer*; thus the rejection fails under 37 CFR 1.104 (c)(2), which requires:

When a reference is complex or shows or describes inventions other than that claimed by the applicant, *the particular part relied on must be designated as nearly as practicable*. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified. (emphasis added).

Applicants submit the rejections of claims 24 and 29, which also recite a “configuration schema,” are also improper.

Moreover, claim 1 recites “retrieving a first of the plurality of configuration commands from the network device configuration corresponding to the network device;” yet the Final Action has not identified even a suggestion of these limitations within *Shafer*. Specifically, the Final Action does not identify a single portion of *Shafer* that allegedly teaches “retrieving a first of the plurality of configuration commands from the network device configuration corresponding to the network device,” and as a consequence, the rejection of claim 1 and claims 24 and 29, which include similar limitations, is improper under 37 CFR 1.104 (c)(2) and §103(a).

Referring next to claim 10, the Final Action does not identify--with any specificity--any construct within *Shafer* that allegedly corresponds to the recited “intermediate schema representation system (ISR)” and the recited “document object model (DOM) transformer.” Specifically, instead of identifying limitations recited in claim 10, the Final Action appears to recite limitations from claim 1 (See Final Action pages 4 and 5). The Final Action, at page 11, does contend that *Shafer* discloses a “interface language for CLI (it’s called intermediate schema representation) for system interfacing.” But the Final Action provides no insight as to how an “interface language” can suggest the recited intermediate schema representation system (ISR). Nor does the Final Action provide any specificity as what construct in *Shafer* allegedly corresponds to the recited “intermediate schema representation system.” As a consequence the rejection

is improper under both 37 CFR 1.104 (c)(2) and §103(a).

In addition, the Final Action, at page 11, contends that *Shafer* teaches a “DOM implementation or generator available in several programming languages....” But the Final Action does not even allege that *Shafer* teaches or suggests the recited “document object model (DOM) transformer.” Nor does the Final Action identify, with any specificity what construct within *Shafer* allegedly corresponds to the DOM transformer. As a consequence the rejection is improper under both 37 CFR 1.104 (c)(2) and §103(a).

Turning to claim 19, the Final Action again appears to be reciting elements of claim 1 instead of identifying at least a suggestion of each limitation of claim 19 in the prior art. Specifically, the Final Action does not identify even a suggestion of the recited “plurality of network devices.” In particular, Applicants have been unable to find the recited “plurality of network devices” even mentioned in the Final Action; thus the rejection is clearly improper under both 37 CFR 1.104 (c)(2) and §103(a).

In addition, the Final Action does not identify with specificity any construct that allegedly corresponds to the recited “DOM generator” that is connected to the plurality of network devices. Instead the Final Action alleges, without pointing to anything specifically, that paragraphs [0046]-[0050] teach a DOM generator. A word search of *Shafer*, however, reveals that *Shafer* does not disclose a “DOM generator” and the Final Action does not identify any construct that allegedly corresponds to the recited DOM generator; thus the rejection is improper under both 37 CFR 1.104 (c)(2) and §103(a).

Moreover, the Final Action completely ignores the recited “configuration schema storage device connected to the DOM generator” that is recited in claim 19. Again, a proper rejection requires that at least a suggestion of each limitation be identified in the prior art. The Final Action, however, does not even mention the “configuration storage device;” thus the rejection is clearly improper under both 37 CFR 1.104 (c)(2) and §103(a).

Finally, claim 19 recites a “DOM storage device connected to the DOM generator.” The Final Action, however, appears to ignore these limitations and instead alleges that *Shafer* discloses “[m]eans for storing DOM and means for temporarily storing generated DOM implementation ([0046]-[0049],[0057],[0060]).” Presumably the

Final Action contends that *Shafer* teaches a “means for storing DOM,” and the “means for storing DOM” corresponds to the recited “DOM storage device.” Assuming, arguendo, that somewhere, *Shafer* does teach a “means for storing DOM,” the Final Action merely points to paragraphs [0046]-[0049],[0057],[0060] without identifying--with any specificity--what construct within these portions of *Shafer* allegedly discloses “means for storing DOM.” As a consequence, the rejection is improper under both 37 CFR 1.104 (c)(2) and §103(a). Moreover, in claim 19, the recited “DOM storage device” is connected to “the DOM generator.” The Final Action does not attempt to identify where the alleged “means for storing DOM” is connected to a “DOM generator,” and as a consequence, the rejection of claim 19 is also improper for this additional reason.

Applicants also submit the rejections of dependent claims 3-9, 11-18, 20-23, 25-28 and 30-36 are also improper, at least, because each of the respective independent claims from which these dependent claims depend includes several limitations not identified in the prior art.

Applicants would like to make clear that the arguments presented herein are merely those that are most appropriate for pre appeal brief review and are certainly not the only arguments related to patentability. Additional and more detailed arguments are expressly reserved for an Appeal Brief.

SUMMARY

The rejections under §103(a) are improper and claims 1 and 3-36 are allowable. Applicants respectfully request such a finding for the reasons set forth herein. The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §§1.16, 1.17, and 1.21 that may be required by this paper.

COOLEY GODWARD LLP
Attention: Patent Group
One Freedom Square - Reston Town Center
11951 Freedom Drive
Reston, Virginia 20190-5601
Tel: (720) 566-4035
Fax: (720) 566-4099

By:

Respectfully submitted,
COOLEY GODWARD LLP


Sean R. O'Dowd
Reg. No. 53,403